

GUY A. MARTIN
ADA E. MARTIN

IBLA 76-527, 76-528

Decided August 18, 1976

Appeal from decisions of the New Mexico State Office, Bureau of Land Management, rejecting applications for desert land entry, NM-13302 and NM-13303.

Affirmed.

1. Desert Land Entry: Generally -- Public Lands: Classification

It is proper to reject applications for desert land entries filed for lands which have been classified by the Secretary, pursuant to the petition classification procedure set forth in 43 CFR subpart 2450, as unsuitable for desert land entry and, therefore, are not open for disposition under the desert land laws. The decision of the Secretary is the final Departmental action and the applicants cannot have a review on the merits of an appeal from the subsequent decision rejecting their applications.

APPEARANCES: Frederick A. Smith, Esq., of Truth or Consequences, New Mexico, for appellants.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Guy A. Martin and Ada E. Martin have appealed from separate decisions of the New Mexico State Office, Bureau of Land Management (BLM), dated February 23, 1976, which rejected their desert land applications 1/ for the reason that the applied for lands have

1/ Guy Martin's application (NM-13302) describes the S 1/2 N 1/2 and N 1/2 S 1/2 Sec. 4, T. 21 S., R. 5 W., and Ada E. Martin's application (NM-13303) describes the S 1/2 S 1/2 Sec. 4, W 1/2 NW 1/4,

been classified as unsuitable for desert land entry because they did not meet the criteria of 43 CFR 2430.5(e). 2/

This section of the regulations provides:

Lands may be classified as suitable for desert land entry under Part 2520 of this chapter if (1) the lands are chiefly valuable for agricultural purposes, and (2) all provisions concerning irrigation waters set forth in § 2430.5(d) are met.

The record shows that on February 18, 1971, appellants originally filed their desert land entry applications together with petition-applications to classify the applied for lands for desert land entry. Acting pursuant to 43 CFR subpart 2450, which sets out the procedure to be followed where, as here, land must be classified before an application may be approved, the BLM New Mexico State Director issued initial classification decisions October 29, 1974, which classified the lands as unsuitable for desert land entry. Appellants pursued their remedies by means of the classification protest procedures set forth under the regulations in 43 CFR 2450.5, which provides for a protest of the initial decision to the Secretary. On January 15, 1976, the Deputy Assistant Secretary of the Interior affirmed the BLM's classification of the land as unsuitable for desert land entry. The Secretary's decision specifically stated as the regulation provides, 43 CFR 2450.5(c), "This constitutes the final action of the Department on this matter."

Appellants are now appealing the subsequent rejection of their desert land applications by again challenging the basis of the Department's classification.

The pertinent regulations in 43 CFR 2450.5(d) provide:

No petitioner-applicant or protestant to a proposed classification decision of a State Director to whom the provisions of this section are applicable shall be entitled to any administrative review other than that provided by this section or to appeal under provisions of Parts 1840 and 1850 of this chapter.

[1] It has long been held that Section 7 of the Taylor Grazing Act, 48 Stat. 1269, as amended, 43 U.S.C. § 315 (1970), grants the

fn. 1 (continued)

and N 1/2 SW 1/4 Sec. 10, T. 21 S., R. 5 W., New Mex. Prin. Mer., New Mexico

2/ The decision referred to 2430.5(d), relating to homesteads, but plainly 2430.5(e) was the intended reference.

Secretary discretionary power to classify the public lands, and in exercising the discretionary authority vested in him by the Taylor Act, supra, he may properly consider and weigh all factors which have a bearing on the suitability of the land for use and disposal, including the effect on the public interest. Gerttula v. Udall, 309 F.2d 653 (D.C. Cir. 1962). The Secretary's classification decision was issued in the proper exercise of his authority and, therefore, the lands have properly and finally been classified as unsuitable for desert land entry. Appellants have had more than ample opportunity to submit their reasons to the Department why this classification should have been otherwise and they have not been persuasive.

Since the lands were classified as unsuitable for desert land entry, the lands were not open to disposition under the desert land laws and appellants' applications were properly rejected. Appellants are not entitled to any further administrative review by this Board of the Secretary's determination.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Martin Ritvo
Administrative Judge

We concur:

Douglas Henriques
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

